

THE HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

LARRY C. OCKLETREE, individually,

Plaintiff,

vs.

FRANCISCAN HEALTH SYSTEM, a Washington
corporation, d/b/a ST. JOSEPH HOSPITAL;
and JOHN and JANE DOE(S) (1-10),

Defendants.

NO. 11-05836 RBL

AMENDED COMPLAINT

JURY DEMAND REQUESTED

Plaintiff, Larry C. Ockletree, by and through his attorneys of record, Dwayne L. Christopher and James W. Beck and Stephanie Bloomfield of Gordon, Thomas, Honeywell, LLP alleges as follows:

I. JURISDICTION

1.1 This matter was removed from Pierce County Superior Court Cause No. 11-2-13029-6 by the Defendants, on the basis of a federal question, to the United States District Court for the Western District of Washington at Tacoma on October 11, 2011.

1.2 This court has jurisdiction over Plaintiff's claims based on federal law (42 U.S.C. §1981, 42 U.S.C. § 2000e et seq, and 42 U.S.C. § 12101 et seq.) under 28 U.S.C.

§ 1331, and has supplemental jurisdiction over Plaintiff's related state law claims under 28 U.S.C. § 1367

II. PARTIES

2.1 Plaintiff resides in Tacoma, Washington.

2.2 Defendant Franciscan Health System d/b/a St. Joseph Hospital is a Washington corporation doing business in Pierce County, Washington. St. Joseph Hospital is plaintiff's former employer.

2.3 Defendant(s) John and Jane Does (1-10) are yet to be identified managers, supervisors, employees, agents and/or assigns of defendant Franciscan Health System.

III. STATEMENT OF FACTS

3.1 This claim arises as a result of the wrongful, tortious, and discriminatory acts and/or omissions committed against the Plaintiff by Defendant(s) due to or substantially due to Plaintiff's disability and/or race.

3.2 Plaintiff is a disabled African American male, a former law enforcement officer, and a former employee of St. Joseph Hospital.

3.3 Plaintiff began his employment with St. Joseph Hospital as a contract security officer.

3.4 Plaintiff provided St. Joseph Hospital with excellent job performance for years and throughout his tenure as a contract security officer, receiving numerous awards and commendations for his service to the organization.

3.5 In December 2009, St. Joseph Hospital converted Plaintiff's security officer position from a contract position to a permanent in-house position and hired Plaintiff as a St. Joseph Hospital employee.

1 3.6 Plaintiff performed his job duties with excellence throughout his
2 employment with St. Joseph Hospital.

3 3.7 On March 9, 2010, Plaintiff suffered an on-the-job stroke requiring him to
4 be hospitalized.

5 3.8 Plaintiff's stroke resulted in permanent disability to his left arm and limited
6 use of his left arm and hand.

7 3.9 Plaintiff was released to return to work by his doctor on or about April 23,
8 2010.

9 3.10 Despite his disabled left arm and hand, Plaintiff was capable of performing
10 his job duties as a security officer that he was assigned at the time of his stroke as well
11 as the duties of various other security guard positions with or without reasonable
12 accommodations.

13 3.11 On or about April 23, 2010, Plaintiff presented to St. Joseph Hospital with a
14 doctor's note releasing him to return to work.

15 3.12 On or about April 23, 2010, Plaintiff requested that St. Joseph Hospital
16 permit him to return to work.

17 3.13 St. Joseph Hospital refused to allow Plaintiff to return to work despite the
18 fact that Plaintiff was capable of performing his job duties with or without reasonable
19 accommodations.

20 3.14 Plaintiff requested that St. Joseph Hospital make reasonable
21 accommodations for his disability and St. Joseph Hospital refused.

22 3.15 St. Joseph Hospital told Plaintiff that if it made reasonable
23 accommodations for him, it would be required to make accommodations for all
24 employees.
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1 3.16 St. Joseph Hospital has made reasonable accommodations for disabled
2 non-African American employees.

3 3.17 St. Joseph Hospital filled open positions that Plaintiff was qualified to fill
4 with or without reasonable accommodations during the time Plaintiff was out on non-paid
5 medical leave and failed to offer said positions to Plaintiff prior to terminating his
6 employment.
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8 3.18 St. Joseph Hospital filled open positions that Plaintiff was qualified to fill
9 with non-disabled individuals during the time St. Joseph Hospital refused to allow Plaintiff
10 to return to work.

11 3.19 St. Joseph Hospital filled open positions that Plaintiff was qualified to fill
12 within non-African American individuals during the time St. Joseph Hospital refused to
13 allow Plaintiff to return to work.

14 3.20 St. Joseph Hospital failed to promote Plaintiff to positions within its
15 organization in favor of less qualified non-African American and/or non-disabled
16 individuals.
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18 3.21 St. Joseph Hospital unlawfully and wrongfully terminated Plaintiff's
19 employment on or about September 10, 2010.

20 3.22 Plaintiff timely filed a charge of discrimination with the EEOC and received
21 a right to sue letter and filed his initial complaint within the requisite time period.

22 3.23 Defendants' unlawful and wrongful conduct was malicious, oppressive or in
23 reckless disregard of Plaintiff's rights, and was the proximate cause of injury and damage
24 to Plaintiff, including substantial economic and non-economic damages.
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1 **IV. FIRST CAUSE OF ACTION**
2 **Violation of the Americans with Disabilities Act**

3 4.1 Defendants violated Plaintiff's rights under the Americans with Disabilities
4 Act, 42 U.S.C. § 12101 et seq., by terminating his employment based upon his disability,
5 and failing to provide accommodation for his disability causing damages to Plaintiff.

6 4.2 Defendants are liable for all resulting damages sustained by Plaintiff as
7 allowed by law, including but not limited to, past and future wage loss, other economic
8 damages, emotional distress and other non-economic damages, and punitive damages.

9 **V. SECOND CAUSE OF ACTION**
10 **Violation of the Title VII of the Civil Rights Act of 1964**

11 5.1 Defendants violated Plaintiff's rights under Title VII of the Civil Rights Act of
12 1964, 42 U.S.C § 2000e et seq., by terminating his employment and refusing to provide
13 benefits of employment based on Plaintiff's race causing damages to Plaintiff.

14 5.2 Defendants are liable for all resulting damages sustained by Plaintiff as
15 allowed by law, including but not limited to, past and future wage loss, other economic
16 damages, emotional distress and other non-economic damages, and punitive damages.

17 **VI. THIRD CAUSE OF ACTION**
18 **Violation of 42 U.S.C. §1981**

19 6.1 Defendants violated Plaintiff's rights under 42 U.S.C § 1981 by terminating
20 his employment and refusing to provide equal benefits of employment based on
21 Plaintiff's race causing damages to Plaintiff.

22 6.2 Defendants are liable for all resulting damages sustained by Plaintiff as
23 allowed by law, including but not limited to, past and future wage loss, other economic
24 damages, emotional distress and other non-economic damages, and punitive damages.
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VII. FOURTH CAUSE OF ACTION
Wrongful Discharge in Violation of Public Policy

7.1 The Washington legislature and Washington courts have established a clear public policy in favor of prohibiting discrimination in employment on the basis of race and disability. Defendant Franciscan Health System claims to “seek applicants who are able to perform the essential job functions according to the job description, with or without reasonable accommodation” and holds itself out as an “equal opportunity employer,” asserting as follows on its website:

We do not discriminate

We do not discriminate against any person on the basis of race, color, religion, gender, sexual orientation, national origin, disability or age in admission to, treatment or participation in, our programs, services and activities.

Equal opportunity/affirmative action

As an equal opportunity employer, we embrace equal treatment and opportunity in every aspect of relations with our employees and job applicants without regard to race, color, religion, gender, sexual orientation, national origin, age, disability or veteran status.

7.2 Permitting Defendants' wrongful conduct would jeopardize the public policy described above and Defendants should be stopped from withdrawing their stated intent that they will not discriminate.

7.3 Plaintiff was wrongfully terminated by Defendants because of his race and/or his disability.

7.4 There is no overriding, legitimate justification for Plaintiff's dismissal.

7.5 Defendants' termination of Plaintiff was against public policy and caused damages to Plaintiff.

7.6 Defendants are liable for all damages sustained by Plaintiff as allowed by law, including but not limited to, past and future wage losses, other economic damages, emotional distress, and other non-economic damages.

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VIII. FIFTH CAUSE OF ACTION
Violation of Washington's Law Against Discrimination

8.1 Defendants violated Plaintiff's rights under Washington's Law Against Discrimination, RCW Chapter 49.60, by terminating his employment based on his disability, and failing to provide accommodation for his disability causing damages to Plaintiff.

8.2 Defendants further violated Plaintiff's rights under Washington's Law Against Discrimination, RCW Chapter 49.60, by treating him less favorably in the terms and conditions of his employment based upon his race and/or his disability causing damages to Plaintiff.

8.3 Defendant should be estopped from asserting that it is exempt under Washington's Law Against Discrimination, because Plaintiff relied on Defendant's promise of Equal Opportunity in Employment and compliance with Washington's Law Against Discrimination. To the extent that Defendant may be exempted under RCW 49.60.040(11), this exemption is unconstitutional

8.4 Defendants are liable for all damages sustained by Plaintiff as allowed by law, including but not limited to, past and future wage loss, other economic damages, emotional distress, and other non-economic damages.

IX. SIXTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

9.1 Defendants as Plaintiff's employer, had a duty of care to not to permit or tolerate behavior that is injurious to its employees such as Plaintiff.

9.2 Defendants breached these and other duties to Plaintiff by wrongfully harassing and terminating Plaintiff.

9.3 The breach of these duties was a proximate cause of severe emotional distress, anxiety, and mental anguish on the part of Plaintiff, which manifested itself through objective symptomatology and has been diagnosed and treated by Plaintiff's medical providers.

9.4 Defendants are liable for all damages proximately caused to Plaintiff as allowed by law, including but not limited to, past and future wage losses, other economic damages, emotional distress, and other non-economic damages.

JURY DEMAND

Plaintiff has previously timely demanded a trial by jury in this matter on October 20, 2010. *Dkt. #8*

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully prays that this Court for the following relief:

1. Judgment for economic and non-economic damages in an amount to be proven at trial.
2. Judgment for exemplary and/or punitive damages to the extent authorized by law.
3. Injunctive relief, including but not limited to reinstatement of employment, as provided by state and federal law.
4. Prejudgment interest.
5. Judgment for supplemental damages to offset tax impact of lump sum damages awarded as provided by *Blaney v. International Ass'n of Machinists & Aerospace Workers*, 151 Wn.2d 203, 87 P.3d 757 (2004).
6. Reasonable attorney's fees and costs as authorized by law.
7. For such other and further relief as the Court deems just and proper.

1 Dated this 6th day of April, 2012.

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